रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 32] नई दिल्ली, मंगलवार, जुलाई 22, 1975/श्रावण 31, 1897
No. 32] NEW DELHI, TUESDAY, JULY 22, 1975/ASADHA 31, 1897

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 22nd July, 1975.

BILL No. 50 OF 1975

A Bill to amend the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975.

(*2*) It shall be deemed to have come into force on the 1st day of July, 1975.

Insertion of new section 5A.

52 of 1974.

2. In the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the principal Act), after section 5, the following section shall be inserted, namely:—

Grounds of detention severable.

"5A. Where a person has been detained in pursuance of an order of detention under sub-section (*1*) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(*a*) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(*i*) vague,

(*ii*) non-existent,

(*iii*) not relevant,

(*iv*) not connected or not proximately connected with such person, or

(*v*) invalid for any other reason whatsoever,

and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (*1*) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(*b*) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (*1*) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.".

Amendment of section 12.

3. In section 12 of the principal Act, after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*6*) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.".

Insertion of new section 12A.

4. After section 12 of the principal Act, the following section shall be inserted, namely:—

Special provisions for dealing with emergency.

'12A. (*1*) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twelve months from the 25th day of June, 1975, whichever period is the shortest.

(*2*) When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamations referred to in sub-section (*1*) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned:

Provided that where such declaration is made by an officer, it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, that Government may revoke the declaration.

(4) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that sub-section is in force, and, accordingly, such period shall not be taken into account for the purposes of sub-section (3) of section 3.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made thereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing—

(i) the periods specified in clauses (b) and (c) of section 8;

(ii) the periods of "one year" and "five weeks" specified in sub-section (1), the period of "one-year" specified in sub-section (2) (i), and the period of "six months" specified in sub-section (3), of section 9.'.

6 of 1976.

5. (1) The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1975, is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Smuggling, foreign exchange racketeering and related activities have a deleterious effect on the national economy and thereby a serious adverse effect on the security of the State. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, was enacted to immobilise by detention the persons engaged in these operations and to disrupt the machinery established for furthering smuggling and foreign exchange manipulations, with all their ramifications. The effective administration and realisation of the purposes of the Act have been rendered difficult by reason of the clandestine manner in which the persons engaged in these operations carry on their activities and the consequent difficulty in securing sufficient evidence to comply with the rigid standards insisted upon by courts. Some persons against whom orders of detention were made under the Act had to be released because the orders of detention were held to be void as some of the grounds of detention were considered by Courts to be vague, irrelevant or otherwise invalid. In a few cases difficulties were experienced in the administration of the Act by reason of the detenus obtaining release on bail or otherwise.

2. Some of the persons engaged in smuggling and foreign exchange racketeering have been posing a serious threat to the economy and to the security of the nation owing to their large resources and influence. In the present emergency, the disclosure of grounds of detention to such persons and compliance with the usual procedures of references to Advisory Boards would not be in the large interests of the nation.

3. In view of the urgency of the matter, the President promulgated on the 1st July, 1975, the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1975 to remove the afore-mentioned difficulties and to make special provisions in respect of persons whose detention is necessary for dealing effectively with the emergency.

4. The Bill seeks to replace the Ordinance

NEW DELHI; C. SUBRAMANIAM.

The 18th July, 1975

BILL No. 54 OF 1975

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Thirty-ninth Amendment) Act, 1975.

Amendment of article 123.

2. In article 123 of the Constitution, after clause (3), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(4) 'Notwithstanding anything in this Constitution the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.".

Amendment of article 213.

3. In article 213 of the Constitution, after clause (3), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(4) Notwithstanding anything in this Constitution, the satisfaction of the administrator mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.".

Amendment of article 239B.

4. In article 239B of the Constitution, after clause (3), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(4) Notwithstanding anything in this Constitution, the satisfaction of the administrator mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.".

Amendment of article 352.

5. In article 352 of the Constitution, after clause (3), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(4) The power conferred on the President by this article shall include the power to issue different Proclamation on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in this Constitution,—

(*a*) the satisfaction of the President mentioned in clause (1) and clause (3) shall be final and conclusive and shall not be questioned in any court on any ground;

(b) subject to the provisions of clause (2), neither the Supreme Court nor any other court shall have jurisdiction to entertain any question, on any ground, regarding the validity of—

(*i*) a declaration made by Proclamation by the President to the effect stated in clause (1); or

(*ii*) the continued operation of such Proclamation."

Amendment of article 356.

6. In article 356 of the Constitution, after clause (4), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.".

Amendment of article 359.

7. In article 359 of the Constitution, after clause (1), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

"(1A) While an order made under clause (1) mentioning any of the rights conferred by Part III is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.".

Amendment of article 360.

8. In article 360 of the Constitution, after clause (4), the following clause shall be inserted, and shall be deemed always to have been inserted, namely:—

(5) Notwithstanding anything in this Constitution,—

(*a*) the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground;

(b) subject to the provisions of clause (2), neither the Supreme Court nor any other cuort shall have jurisdiction to entertain any question, on any ground, regarding the validity of—

(*i*) a declaration made by Proclamation by the President to the effect statcd in clause (1); or

(*ii*) the continued operation of such Proclamation.".

STATEMENT OF OBJECTS AND REASONS

The Constitution (Thirty-ninth Amendment) Bill, 1975 seeks to amend articles 123, 213, 239B, 352, 356, 359 and 360 of the Constitution.

2. Article 123 empowers the President to promulgate Ordinances when both the Houses of Parliament are not in session if he is satisfied that circumstances exist rendering it necessary to take immediate action Corresponding powers have been conferred by the Constitution on the Governor under article 213. Similar powers have been conferred on the Administrator under article 239B when the Legislature of a Union territory is not in session. On the plain language of articles 123, 213 and 239B there is no doubt that the satisfaction mentioned in those articles is subjective satisfaction and that it is not justiciable. There is no doubt that this was also the intention of the makers of the Constitution. However, litigation is pending involving the justiciability of this issue and contentions are being raised that the issue is subject to judicial scrutiny. To place the matter beyond doubt, it is proposed to provide in the Constitution that the satisfaction of the President, Governor or Administrator shall be final and conclusive and shall not be questioned in any court on any ground.

3. Article 352 empowers the President to declare Emergency if he is satisfied that the security of India or any part of it is threatened by war, external aggression or internal disturbance. Article 356 empowers the President to assume to himself the functions of the Government of a State if the constitutional machinery in any State fails and the Government in the State cannot be carried on. Likewise article 360 empowers the President to declare Financial Emergency if he is satisfied that the financial stability of India is threatened. Here again, the issue regarding satisfaction is, on the face of the article clearly not justiciable. However, as the validity of the Proclamation issued under article 352 has been challenged in several proceedings and as litigation of this nature involves waste of public time and money, it is proposed to amend these three articles so as to make the satisfaction of the President final and conclusive and not justiciable on any ground.

4. In relation to article 352, contentions have been raised in certain writ petitions that while the orginal Proclamation of Emergency is in operation no further Proclamation of Emergency could be made thereunder. In order to place the matter beyond doubt it is proposed to make it clear in article 352 that the President may issue different Proclamations on different grounds whether or not there is a Proclamation already in existence and in operation.

5. When a Proclamation of Emergency is in operation, the President is empowered under article 359 of the Constitution to make an order suspending the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in that order. It

was intended that the powers conferred by this article should be exercised during an emergency according to needs of the situation. On the other hand, article 358 renders the provisions of article 19 automatically inoperative while the Proclamation of Emergency is in operation, and the power to make any law or to take any executive action is not restricted by the provisions of that article. The intention underlying article 359 appears to be that when an order is made under clause (1) of that article in relation to any of the rights conferred by Part III and mentioned in the order, the order so made would have for all practical purposes the same effect in relation to those rights as article 358 has in relation to article 19. It is, therefore, proposed not to have any differences in language between article 358 and the language in respect of those rights only which may be mentioned in the Presidential Order under clause (1) of article 359.

6. The Bill seeks to achieve the aforesaid objects.

NEW DELHI,
The 20th July, 1976.

H. R. GOKHALE.

BILL NO. 53 OF 1975

A Bill to amend the Finance Act, 1975.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Finance (Amendment) Act, 1975.

Amendment of section 2.

2. In section 2 of the Finance Act, 1975 (hereinafter referred to as the principal Act), in sub-section (7), for the words "six thousand rupees", wherever they occur, the words "eight thousand rupees" shall be substituted, and shall be deemed to have been substituted with effect from the 1st day of April, 1975. 25 of 1975

Amendment of the First Schedule.

3. In the First Schedule to the principal Act, for Paragraph A of Part III, the following Paragraph shall be substituted, and shall be deemed to have been substituted with effect from the 1st day of April, 1975, namely:—

"*PARAGRAPH A*

Sub-Paragraph I

In the case of every individual or Hindu undivided family or unregistered firm or other association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (*vii*) of clause (*31*) of section 2 of the Income-tax Act, not being a case to which Sub-Paragraph II of this

Paragraph or any other Paragraph of this Part applies,—

Rates of income-tax

(1) where the total income does not exceed Rs. 8,000	*Nil;*
(2) where the total income exceeds Rs. 8,000 but does not exceed Rs. 15,000	17 per cent. of the amount by which the total income exceeds Rs. 8,000;
(3) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000	Rs. 1,190 *plus* 20 per cent. of the amount by which the total income exceeds Rs. 15,000;
(4) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000	Rs. 2,190 *plus* 30 per cent of the amount by which the total income exceeds Rs. 20,000;
(5) where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000	Rs. 3,690 *plus* 40 per cent. of the amount by which the total income exceeds Rs. 25,000;
(6) where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000	Rs 5,690 *plus* 50 per cent. of the amount by which the total income exceeds Rs. 30,000;
(7) where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000	Rs. 15,690 *plus* 60 per cent. of the amount by which the total income exceeds Rs. 50,000;
(8) where the total income exceeds Rs. 70,000	Rs. 27,690 *plus* 70 per cent. of the amount by which the total income exceeds Rs. 70,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Sub-Paragraph shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

Sub-Paragraph II

In the case of every Hindu undivided family which at any time during the previous year has at least one member whose total income of the previous year relevant to the assessment year commencing on the 1st day of April, 1976 exceeds Rs. 8,000,—

Rates of income-tax

(1) where the total income does not exceed Rs 8,000	*Nil:*
(2) where the total income exceeds Rs. 8,000 but does not exceed Rs. 15,000	20 per cent. of the amount by which the total income exceeds Rs. 8,000;
(3) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000	Rs. 1,400 *plus* 30 per cent of the amount by which the total income exceeds Rs. 15,000;
(4) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000	Rs. 2,900 *plus* 40 per cent. of the amount by which the total income exceeds Rs. 20,000;
(5) where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000	Rs. 4,900 *plus* 50 per cent. of the amount by which the total income exceeds Rs. 25.000;

(6) where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000	Rs. 7,400 *plus* 60 per cent. of the amount by which the total income exceeds Rs. 30,000;
(7) where the total income exceeds Rs. 50,000	Rs. 19,400 *plus* 70 per cent. of the amount by which the total income exceeds Rs. 50,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Sub-Paragraph shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.".

Special provision in relation to advance tax payable during the financial year 1975-76.

4. Notwithstanding the amendments made by this Act to the principal Act, where, in the case of an assessee, an order has been made by the Income-tax Officer under section 210 of the Income-tax Act, 1961 and in pursuance thereof a notice of demand for payment of advance tax during the financial year commencing on the 1st day of April, 1975 has been issued by the Income-tax Officer before the commencement of this Act,— 43 of 1961.

(*i*) the validity of such order or notice shall not be called in question merely on the ground that the rate or rates for the purposes of computing the advance tax have been varied by this Act;

(*ii*) every such order and notice of demand shall have effect as if the amount of advance tax specified therein had been substituted by the amount of advance tax computed in accordance with the rate or rates as so varied; and

(*iii*) the excess amount, if any, paid by the assessee in an instalment due on the 15th day of June, 1975 may be adjusted against the amount payable in the instalment due on the 15th day of September, 1975.

Explanation.—All words and expressions used in this section which are defined in the Income-tax Act, 1961 shall have the meanings, respectively, assigned to them in that Act. 43 of 1961.

STATEMENT OF OBJECTS AND REASONS

At present, the exemption limit for income-tax in the case of individuals, Hindu undivided families, unregistered firms, other associations of persons or bodies of individuals and artificial juridical persons is Rs. 6,000. It is proposed to raise this limit to Rs. 8,000. Accordingly, the Bill seeks to replace the rate schedules specified in the Finance Act, 1975 in the case of the above categories of taxpayers for the purposes of calculating income-tax deductible at source from "Salaries" during the financial year 1975-76, computation of advance tax payable during the said financial year, etc. The rate of income-tax on the first slab of income up to Rs. 8,000 is proposed to be fixed at *nil* and the rate of income-tax on the new slab of Rs. 8,001—15,000 is being suitably adjusted to moderate, in the case of taxpayers in higher income brackets, the extent of the benefit resulting from the raising of the *nil* rate slab from Rs. 6,000 to Rs. 8,000. Besides, certain consequential amendments are proposed to be made in the provisions of the Finance Act, 1975.

2. An independent provision is also proposed to be made to secure that notices for payment of advance tax during the financial year 1975-76 already issued by Income-tax Officers are deemed to have been revised on the basis of the new rate schedules.

3. The Bill seeks to achieve the above objects.

C. SUBRAMANIAM.

S. L. SHAKDHER,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1975